IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.241 OF 2005

The Eastern Bunkerers Pvt. Ltd.)..Petitioners

Vs.

The Bombay Stevedores' Association Ltd.)..Respondents

Mr.Jaideep K. Mitra i/b.Deven Dwarkadas & Partners for the Petitioners.

Mr.Dinesh Pednekar i/b.Khaitan & Jaykar for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 15TH DECEMBER 2005

P.C.:

. This Petition has been filed by an erstwhile member of the Company known as Bombay Stevedores' Association Limited. This Company provides financial assistance to its members in order to pay wage bills which are less than Rs.12 lakhs. According to the Petitioners, an amount of Rs.4.64 lakhs is due and payable by the Company to the Petitioners upto the year 1999. On this basis, the Petitioners claim that the Company having failed to make payments of the money it should be wound up.

2. A further submission is made that although the

debt may be barred by limitation as the amount fell due in 1999, the Company has not carried on any business for over one year as is seen from the correspondence carried out and the resolution passed by the Company. In such circumstances, claims the Petitioner, the Company should be wound up under Section 433(c) of the Companies Act, 1956.

3. The learned Advocate for the Respondent Company submits that the debt being time barred, the Company Petition should not be entertained. Furthermore, the amount which the Petitioner claims was not in fact a debt due by the Company to the Petitioners but was an amount which the Company was providing to the Petitioners and other members of the Company by way of financial assistance. He submits that this financial assistance was provided for payment of wage bills and other charges in the event they amounted to less than Rs.12 lakhs. According to the learned Advocate, this financial assistance was only a small portion of the wage bill to be paid by the members and, therefore, it cannot be termed as a debt due to the Petitioners. He further submits that the Company is running its business since then and there is no suspension of business at all. He submits that several Suits have been filed in this Court by the Company and it is in fact running its business.

4. Heard Counsel.

5. The Petitioners have not made out any case for admitting the Petition. The debt is hopelessly time barred. The amount which the Petitioners have claimed was an amount which was provided to the Petitioners by way of financial assistance by the Respondents in order to compensate small Stevedores Members whose annual MbPT wage bill was less than Rs.12 lakhs. The Respondents have not admitted the debt and in fact have stated that an amount of Rs.3,47,537/- was due and payable by the Petitioners to the Respondents. In fact, a notice has been issued to the Petitioners by the Respondents claiming this amount, on 25th November 2004, prior to the present Petition being filed.

6. Apart from this, the submission of the learned Counsel for the Petitioners that the Respondent Company should be wound up under Section 433(c) of the Companies Act, 1956 also cannot be accepted. The Petition does not disclose this as a ground for winding up. The statutory notice also does not disclose this ground for winding up of the Respondent Company. In such circumstances, the Petition is rejected. No order as to costs.